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 Attorneys for Defendant/Cross-Complainant
 6 SOUTHWEST SIGNS, LLC

7
 8 IN THE UNITED STATES DISTRICT COURT
 9 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 MICHAEL ARBSLAND,

11 Plaintiff,

12 vs.

13 SOUTHWEST SIGNS, THE HOME DEPOT,
 14 INC.; and DOES 1-100,

15 Defendants.

16 SOUTHWEST SIGNS, LLC,

17 Cross-Complainant,

18 vs.

19 THE HOME DEPOT, SIGNS HAWAII, SIGN
 20 ART, L. MORIGUCHI, INC., and DOES 1
 through 50, inclusive,

21 Cross-Defendants.

No. C06-04191 JF


STIPULATION AND ORDER TO
 ALLOW SOUTHWEST SIGNS, LLC
 LEAVE OF COURT TO FILE SECOND
 AMENDED CROSS-COMPLAINT

22
 23 The undersigned hereby stipulate that Defendant/Cross-Complainant Southwest
 24 Signs, LLC may file its Second Amended Cross-Complaint, which is attached hereto as
 25 Exhibit 1.

Second
Southwest Signs, LLC has amended the First Amended Cross-Complaint to add
additional factual allegations against GELcore, LLC.
IT IS SO STIPULATED.

DATED: 7-27-07

SHEA & SHEA


Michael M. Shea, Esq.
Attorney for Plaintiff

DATED: July 26, 2007

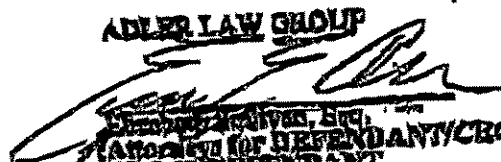
JENSEN, GOODMAN, NEWMAN &
HAMILTON LLP

FRANK L. RUDATI

FRANK L. RUDATI, Esq.
Attorney for DEFENDANT/CROSS-
DEFENDANT HOME DEPOT U.S.A., INC.


DATED: 7/17/07

ADLER LAW GROUP


Stephen M. Adler, Esq.
Attorney for DEFENDANT/CROSS-
DEFENDANT
SIGNS HAWAII
Stephen E. Adler


DATED: 7/20/07

CESARI, WEENER, MORIARTY


Andrew S. Weiner, Esq.
Attorney for DEFENDANT/CROSS-
DEFENDANT
SOUTHWEST SIGNS, LLC

DATED: July 16, 2007

GLYNN & FINLEY


James H. Glynn, Esq.
Attorney for Cross-Defendant
GELcore, LLC.

STIPULATION TO ALLOW SOUTHWEST SIGNS, LLC LEAVE OF COURT TO FILE SECOND AMENDED CROSS COMPLAINT
CASE NO. 07-04191 PUT

ORDER

Pursuant to the stipulation of the parties to allow Defendant/Cross-Defendant/Cross-Complainant Southwest Signs, LLC leave of court to file Second Amended Cross-Complaint to allege additional facts against GELcore, LLC. Defendant/Cross-Defendant/Cross-Complainant Southwest Signs, LLC's proposed Second Amended Cross-Complaint is attached hereto as Exhibit 1.

GOOD CAUSE therefore appearing, Defendant/Cross-Defendant/Cross-Complainant Southwest Signs, LLC is granted leave of Court to file Second Amended Cross-Complaint.

IT IS SO ORDERED.

Dated: 8/2/07


JEREMY FOGEL
United States District Judge

Exhibit 1

DENNIS F. MORIARTY (BAR NO. 37612)
 ANDREW S. WERNER (BAR NO. 135795)
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 4820-3-2-9
 Attorneys for Defendant/Cross-Complainant
 SOUTHWEST SIGNS, LLC

IN THE UNITED STATES DISTRICT COURT
 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ARBSLAND,)	No. C06-04191 JF
)	
Plaintiff,)	SECOND AMENDED CROSS-
)	COMPLAINT FOR COMPARATIVE
vs.)	NEGLIGENCE, EQUITABLE
)	INDEMNITY, CONTRIBUTION, AND
SOUTHWEST SIGNS, THE HOME DEPOT,)	DECLARATORY RELIEF-DUTY TO
INC.; and DOES 1-100,)	DEFEND
)	
Defendants.)	
<hr/> SOUTHWEST SIGNS, LLC,)	
)	
Cross-Complainant,)	
)	
vs.)	
)	
THE HOME DEPOT, SIGNS HAWAII,)	
GELcore, LLC and DOES 1 through 50,)	
inclusive,)	
)	
Cross-Defendants.)	

COMES NOW SOUTHWEST SIGNS, LLC, pursuant to F.R.C.P. 14, and names The Home Depot, Inc., Signs Hawaii and GELcore, LLC as third-party defendants For Comparative Negligence, Equitable Indemnity, Contribution, And Declaratory Relief-Duty To Defend.

1 6. Cross-complainant is informed and believes that cross-defendant
2 GELcore, LLC, doing business as a Limited Liability Company, was and is at all relevant
3 times a corporation qualified to do business and actually doing business in the State of Ohio,
4 at all times referenced in the complaint in this action and in this cross-complaint.

5 7. Cross-complainant does not know the true names of cross-defendants,
6 DOES 1 through 50, inclusive, and, therefore, sues said cross-defendants by such fictitious
7 names and prays for leave to amend this cross-complaint when their true names and
8 capacities have been ascertained.

9 8. Cross-complainant is informed and believes and thereon alleges that at
10 all times herein mentioned, cross-defendants DOES 1 through 50, inclusive, and each of
11 them, are either individuals or business entities licensed to and doing business in the County
12 of Stanislaus and are responsible directly or indirectly or vicariously for the events and
13 happenings herein referred to and caused or are responsible for the damages sustained by
14 plaintiffs, if any, and by cross-complainant.

15 9. Cross-complainant is informed and believes and thereon alleges that at
16 all times herein mentioned, each of the cross-defendants, named and fictitious, were the
17 agents and/or employees of all the other cross-defendants and were acting within the scope of
18 said agency and/or employment.

19 **FIRST CAUSE OF ACTION**
20 **(Comparative Negligence)**

21 10. Cross-complainant realleges and re-incorporates herein by reference
22 each and every allegation set forth in paragraphs 1 through 9 as though fully set forth herein.

23 11. Plaintiff has alleged in his complaint damages as a result of a defective
24 HOME DEPOT sign and has further alleged in his complaint that the HOME DEPOT sign
25 was defectively wired. It is further alleged that SOUTHWEST SIGNS manufactured the sign
26 that was defectively wired.

1 12. Cross-complainant is informed and believes that Cross-Defendant
2 GELcore, LLC was the manufacturer, designer and/or distributor of electrical component
3 parts of the at-issue "THE HOME DEPO" sign, specifically, the electrical wiring and
4 lighting/lamp components, which are alleged to have malfunctioned (i.e. causing a jolt, arch
5 explosion, and/or shock) while Plaintiff was working on the sign and which is alleged to have
6 caused the Plaintiff to fall from the ladder resulting in Plaintiff's injuries. Attached to
7 Southwest Signs, LLC's Second Amended Cross-Complaint as Exhibit A, is a copy of
8 GELcore, LLC's description of "Tetra LED System Layout: 78" The Home Depo-4 Stroke"
9 which describes the various component part(s) of "THE HOME DEPO" sign and which
10 were allegedly manufactured, designed and/or distributed by Cross-Defendant GELcore,
11 LLC. Attached to Southwest Signs, LLC's Second Amended Cross-Complaint as Exhibit B
12 is a copy of Plaintiff's Complaint.

13 13. Cross-complainant at all times denies any and all liability in
14 connection with the action-in-chief, but in the event plaintiff establishes liability in
15 connection with the action-in-chief, cross-complainant alleges that such liability exists, if at
16 all, only as a direct and proximate result of acts, omissions, breaches of contract, and
17 negligence of cross-defendants, and each of them.

18 14. Cross-complainant is entitled to as a matter of law to a judicial
19 determination, apportioning and affixing the comparative negligence of each cross-defendant
20 for any damages awarded to plaintiffs in this action.

21 15. An actual controversy now exists between cross-complainant and
22 cross-defendants, and each of them, as to the rights of indemnity and comparison of
23 negligence owing to cross-complainant by cross-defendants in that cross-complainant
24 contends an indemnity obligation exists whereas cross-defendants deny that such an
25 indemnity obligation exists. Multiplicity of actions will be avoided by resolution of this
26 cross-complaint and the legal action as that filed by plaintiff.

SECOND CAUSE OF ACTION AGAINST ALL CROSS-DEFENDANTS
(Equitable Indemnity)

16. Cross-complainant realleges and re-incorporates herein by reference each and every allegation set forth in paragraphs 1 through 15 as though fully set forth herein.

17. Cross-complainant is informed and believes and thereon alleges that if cross-complainant is found to be liable for the damages, if any, allegedly sustained by plaintiff, cross-defendants, and each of them, have an equitable duty to indemnify cross-complainant.

18. Accordingly, cross-defendants, and each of them, are required by law to hold cross-complainant harmless and to indemnify it from the amount of any judgment or settlement it may be compelled to pay and for cross-complainant's expenses, costs of suit, attorney's fees, and other damages which cross-complainant incurs as a result of this action.

19. An actual controversy exists between cross-complainant and cross-defendants, and each of them under the circumstances alleged above. Cross-complainant contends that the cross-defendants are obligated to hold it harmless and reimburse it for any judgment or settlement and all expenses, costs of suit, attorney's fees, and other damages incurred. Cross-complainant is informed and believes and thereon alleges that cross-defendants, and each of them, deny that they have this obligation. Multiplicity of actions will be avoided by resolution of this cross-complaint in the same legal action as that filed by plaintiff.

THIRD CAUSE OF ACTION AGAINST CROSS-DEFENDANT
(Contribution)

20. Cross-complainant realleges and reincorporates herein by reference and each and every allegation set forth in paragraphs 1 through 19 as though fully set forth herein.

21. Cross-complainant is informed and believes and thereon alleges that the cross-defendants and DOES 1 through 50 are responsible in whole or in part for the obligation, if any, owed to plaintiff. If plaintiff recovers against cross-complainant, the

1 cross-complainant is entitled to contribution among and from the cross-defendants, and each
 2 of them, according to their share of the obligation, if any, owed to plaintiff by way of damage
 3 or loss by settlement or otherwise or, in the alternative, for any judgment rendered against
 4 cross-complaint.

5
 6 **FOURTH CAUSE OF ACTION AGAINST CROSS-DEFENDANT**
(Declaratory Relief)

7
 8 22. Cross-complainant realleges and reincorporates herein by reference
 9 each and every allegation set forth in paragraphs 1 through 21 as though fully set forth
 10 herein.

11 23. A dispute has arisen and an actual controversy now exists between
 12 cross-complainant and cross-defendants and DOES 1 through 50, and each of them, in that
 13 cross-complainant contends it is entitled to a present defense from the cross-defendants, and
 14 each of them, which cross-defendants, and each of them, deny such obligations.

15 24. Cross-complainant desires a judicial determination of their respective
 16 rights and cross-defendants' duties in connection with the matters herein alleged and requests
 17 a declaratory judgment as to the obligation of cross-defendants, and each of them, to cross-
 18 complainant.

19 WHEREFORE, cross-complainant prays judgment as hereinafter set forth:

20 1. For an order of the Court declaring the rights of cross-complainant to
 21 indemnify from the cross-defendants, and each of them, and in regards to all matters alleged
 22 in the pleadings to this action;

23 2. For declaratory judgment adjudicating the obligations of cross-
 24 defendants, and each of them, to defend cross-complainant in this action, to represent the
 25 interests of cross-complainant herein, to hold cross-complainant harmless from any judgment
 26 or settlement herein, and to reimburse cross-complainant for all costs, expenses, attorney's
 27 fees, and other damages incurred in defending this action and in prosecuting this cross-
 28 complaint;

1 3. For an order of the Court determining the comparative degree of fault
2 for each party and the portion of their respective responsibility for plaintiff's damages, if any;

3 4. That cross-complainant is entitled to interest at the legal rate on the
4 foregoing sum from all cross-defendants;

5 5. That cross-complainant is entitled to all costs of suit, including
6 attorney's fees incurred herein from all cross-defendants; and

7 6. For such other and further relief as the Court may deem just and
8 proper.

9
10 DATED: July 10, 2007

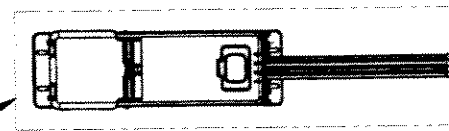
CESARI, WERNER and MORIARTY

11
12 BY _____

DENNIS F. MORIARTY
ANDREW S. WERNER
Attorneys for Defendant /Cross-Complainant
SOUTHWEST SIGNS, LLC

EXHIBIT A

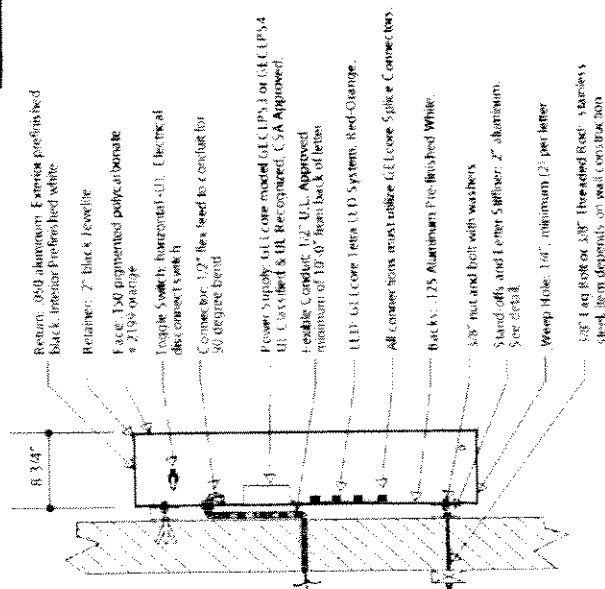
Technical drawing of a sign for "THE FINE FINE FINE". The sign is composed of three identical rectangular panels, each containing the word "FINE" in a stylized, outlined font. The panels are arranged horizontally. Dimensions are indicated: the total width is 78" and the total height is 12". Callouts point to specific details: "1/2\"



Mounting Detail

* Estimated values based upon industry standard installation.

- 1) Return: .050 aluminum. Exterior prefinished black; Interior prefinished white
- 2) Retainer to be 2" black Jewelleite.
- 3) Faces to be .150 pigmented polycarbonate # 2119 orange.
- 4) Gelcore Tetra LED illumination; Red-Orange LED's, UL Recognized & UL Classified.
- 5) Please refer to all applicable Tetra™ Installation Instructions and Application Notes available at www.gelcore.com.



and 12/13/2005

Tetra® Power Supply

☐ GECLPS2 ☒ GECLPS3 ☐ GECLPS4

WAS A PIR - ALL WORKS WILL BE (U. L.) LIMITED
(U. L.) THAT COME, ANY AND CARRY (U. L.) WORK IN
CANADA - ALL WORKS WILL BE CAS COMPLIANT

Notes: LED Strip Application

☐ Wide Angle ☒ 5 per foot ☐ 6 per foot

[illegible]

☒ Red/Orange ☐ Red/Red ☐ Amber
☐ Blue ☐ Green ☐ Cyan

Labeled dimensions enclosed Dimensions are in inches Tolerances on: 1/2 DECIMALS 1/16 ANGLES 15" INSPECTION DIM. <input checked="" type="checkbox"/>		SIGNATURES DRAWN H. HANCOCK 12-28-92 CHECKED E. KINZLE 12-28-92 APPROVED J. KELCHERS 12-28-92		DATE 12-28-92	
LED Lamps DESCRIPTION Tetra™ LED System Layout: 78" The Home Depot - 4 Stroke		VALLEY VIEW, OHIO 44125 GELCORE, LLC (REL) size		DWG NO N/A REV 1 of 1	
SIZE B		INTERPRETATION PER ASME Y14.1M-1995		SCALE 1:50 DO NOT SCALE DRAWING SHEET 1 OF 1	
PROPRIETARY INFORMATION THE INFORMATION CONTAINED HEREIN IS PROPRIETARY OF GELCORE, LLC. ANY REPRODUCTION, IN WHOLE OR IN PART, WITHOUT THE WRITTEN PERMISSION OF GELCORE, LLC IS PROHIBITED. THIS DRAWING, OR USE OF THIS DRAWING, IS EXPRESSLY PROHIBITED EXCEPT AS SPECIFIED IN WRITING BY GELCORE, LLC.					

EXHIBIT B

E-filing

ADR

Original
FILED

JUL 06 2006

RICHARD W. WIDING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

1 SHEA & SHEA
2 A PROFESSIONAL LAW CORPORATION
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4 MICHAEL M. SHEA, JR. (State Bar No. 126983)
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Attorneys for Plaintiff(s)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 MICHAEL ARBSLAND,

12 Plaintiff,

13 vs.

14 SOUTHWEST SIGNS, THE HOME
15 DEPOT, INC.; and DOES 1-100,

16 Defendants.

Case 3:06-cv-04191-PVT

COMPLAINT FOR DAMAGES (STRICT
LIABILITY, NEGLIGENCE)

DATE:
TIME:
DEPT.:
JUDGE:

JURISDICTION

19 1. This Court has original jurisdiction in this action under 28 U.S.C. § 1332 as this is a
20 civil action wherein the amount in controversy exceeds \$75,000, exclusive of interest and costs, and
21 is between citizens of different states. Jurisdiction is established by diversity of citizenship.

22 2. Plaintiff is informed and believes and thereon alleges that Defendant Southwest
23 Signs, at the time of the commencement of this action, is a Texas business entity, form unknown,
24 engaged in the manufacturing, sale, advertising, shipping, and distributing, among other things, of
25 signs and is conducting business in the State of California.

26 3. Plaintiff is informed and believes and thereon alleges that Defendant The Home
27 Depot, Inc. (hereafter "Home Depot"), at the time of the commencement of this action, is a

1 nationwide corporation conducting business in the State of California and in the Northern District of
2 California. Defendant is a business organized under the laws of Delaware, with its principle place
3 of business in Georgia.

4 VENUE

5 4. Venue is proper in the Northern District of California under 28 U.S.C. § 1391. At
6 the time of the commencement of this action, both Southwest Signs and The Home Depot, Inc. are
7 corporations residing in California. At the time of the commencement of this action, The Home
8 Depot, Inc. resides in the Northern District of California. Hence, this is the proper venue for all
9 claims arising from this incident against all defendants.

10 GENERAL ALLEGATIONS

11 5. Plaintiff Michael Arbsland, at the time of the commencement of this action is a
12 citizen of the State of California and a resident of Santa Cruz County, California.

13 6. Plaintiff is informed and believes and thereon alleges that Defendant Southwest
14 Signs, at the time of the commencement of this action, is a Texas business entity, form unknown,
15 engaged in the manufacturing, sale, advertising, shipping, and distributing, among other things, of
16 signs and is conducting business in the State of California.

17 7. Plaintiff is informed and believes and thereon alleges that Defendant The Home
18 Depot, Inc., at the time of the commencement of this action, is a nationwide corporation conducting
19 business in the State of California and in the Northern District of California. Defendant is a
20 business organized under the laws of Delaware, with its principle place of business in Georgia.

21 8. Plaintiff is informed and believes and thereon alleges that Defendant Home Depot
22 purchased Home Depot signs from Defendant Southwest Signs.

23 9. Prior to October 1, 2003, Defendant Home Depot purchased the sign Plaintiff
24 Michael Arbsland was working on prior to falling and sustaining injuries from Defendant Southwest
25 Signs.

26 10. At all times relevant herein, Plaintiff Michael Arbsland as an employee of L.
27 Moriguchi, Inc., a.k.a. "Sign Art," was hired to repair a Home Depot sign. To accomplish this task,

1 Plaintiff was required to stand on a ladder approximately 20 feet in height. Plaintiff conducted
2 himself in a manner intended, directed, and foreseen by defendants, and each of them. During the
3 course of this work, and as a legal result of the defects herein described, to wit defective wiring,
4 Plaintiff suffered serious injuries when the an electrical malfunction, caused by the defective wiring,
5 contained in the sign manufactured by Defendant Southwest Signs and an unknown number of DOE
6 caused Plaintiff to fall off the ladder on which he stood.

7 11. From the instant of the accident, Plaintiff Michael Arbsland was rendered mentally
8 incompetent and incapacitated by reason of a traumatic brain injury. He remained in this state of
9 mental incompetence and incapacity due to injuries he suffered as a result of the wrongful acts of
10 the defendants and the medications he was required to take as a result of his injuries. Consequently,
11 the period of this mental incompetence and incapacity is not part of the time limited for the
12 commencement of this action. Plaintiff is informed and believes and thereon alleges that the
13 recovery from mental incompetence and incapacity did not occur for a period of at least ten months
14 and arose at such a date that the filing of this action is timely and within the relevant state of
15 limitations.

16 12. Plaintiff is ignorant of the true names of defendants sued herein as DOES 1 through
17 100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend
18 this complaint to insert their true names and capacities when ascertained. Plaintiff is informed and
19 believes and thereon alleges that each of these fictitiously named defendants is, and at all times
20 herein mentioned was, in the business of manufacturing, fabricating, assembling, inspecting, and
21 selling the Home Depot signs, or parts of them, manufactured by Defendant Southwest Signs, that
22 each such defendant is responsible in some manner for the occurrence and happenings herein
23 alleged, as well as for Plaintiff's injuries.

24 13. At all times herein mentioned, the defendants, and each of them, were the agents,
25 servants, and employees of each of the remaining defendants, and in doing the things therein alleged
26 were acting within the course and scope of such agency, service, and employment and with the
27 knowledge, consent, and permission of each of said remaining defendants.

1 14. Defendants, and each of them, are and at all times herein mentioned were, engaged in
2 the business of manufacturing, packaging, designing, distributing, testing, constructing, certifying,
3 warranting, fabricating, analyzing, recommending, merchandising, advertising, promoting, and
4 selling signs, ingredients, and constituents for use by the general public.

5
6 **FIRST CAUSE OF ACTION**

7 (Strict Products Liability—Southwest Signs and an unknown number of DOE defendants)

8 Plaintiff Michael Arbsland alleges as and for a cause of action against defendants, and each
9 of them, as follows:

10 15. Plaintiff realleges paragraphs 3 through 14 of the general allegations as though fully
11 set forth at length herein.

12 16. Plaintiff is informed and believes and thereon alleges that Defendant Southwest
13 Signs and an unknown number of DOE defendants, and each of them, are, and at all times herein
14 mentioned were, engaged in the business of designing, testing, manufacturing, distributing,
15 merchandising, promoting, selling, inspecting, and providing, warnings and instructions for signs
16 for sale to, and use by, members of the general public, and as part of their business said defendants
17 designed, manufactured, distributed, and assembled the specific Home Depot sign hereafter referred
18 to in the complaint.

19 17. At all times herein mentioned, Defendant Southwest Signs and an unknown number
20 of DOE defendants, and each of them, knew and intended that the signs would be purchased by
21 members of the public and used by purchasers and others without inspection for defects.

22 18. Said Home Depot sign was unsafe for its intended use by reason of defects in its
23 design, manufacture, and assembly in that the normal use of the Home Depot sign failed to protect
24 against, and allowed, the permanent injury to Plaintiff Michael Arbsland.

25 19. On or about October 1, 2003, Plaintiff Michael Arbsland came into contact with the
26 defective Home Depot sign in Kauai, Hawaii when he was working as an employee for L.
27 Moriguchi, Inc. During the course of his work on the Home Depot sign and as a legal result of the

1 defects herein described, Plaintiff suffered serious injuries when the due to the defective wiring, the
2 sign suffered an electrical malfunction which caused him to fall off a ladder.

3 20. Although plaintiff neither purchased nor used the product, the injury subsequently
4 incurred by him was reasonably foreseeable by virtue of the product's defective condition in that
5 defendants reasonably would have foreseen the need of Home Depot to hire Plaintiff or someone
6 similar to diagnose and repair a defective sign. Additionally, said defendants failed to warn of the
7 potential danger posed by the defective wiring.

8 21. As a direct and proximate result of the acts of the defendants, and each of them, in
9 designing, fabricating, manufacturing, distributing, advertising, merchandising, promoting, selling,
10 and inspecting the Home Depot sign, plaintiff was hurt and injured in his health strength, and
11 activity, and other injury to his body and shock and injury to his nervous system and person. The
12 injuries suffered include, but are not limited to, multiple fractures to his neck, back, and ribs,
13 resulting in paraplegia, and a traumatic brain injury. These injuries have caused and continue to
14 cause plaintiff great mental, physical, and nervous pain and suffering. Plaintiff is informed and
15 believes and thereon alleges that said injuries resulted in permanent disability to him, all to his
16 general damages in a sum according to proof.

17 22. As a further proximate result of said acts of defendants, and each of them, Plaintiff
18 Michael Arbsland was required to and did employ physicians and neurosurgeons to examine, treat,
19 and care for him and did incur medical, hospital, and incidental expenses. Plaintiff will seek leave
20 to amend his complaint when the exact amount has been ascertained, or according to proof.

21 23. As a further proximate result of said acts of defendants, and each of them, Plaintiff
22 Michael Arbsland will be required to and will employ physicians and surgeons to examine, treat,
23 and care for him in the future and will incur future medical, hospital, and incidental expenses.
24 Plaintiff will seek leave to amend his complaint when the exact amount has been ascertained, or
25 according to proof.

26
27

1 24. As a further proximate result of said acts of defendants, and each of them, Plaintiff
2 Michael Arbsland was prevented from attending to his usual occupation and thereby lost earnings
3 according to proof.

4 25. Plaintiff Michael Arbsland is informed and believes and thereon alleges that he will
5 thereby be prevented from attending to said occupation in the future and will thereby sustain a
6 further loss of earnings, all to his damage, according to proof. Plaintiff will seek leave to amend this
7 complaint when the exact amount has been ascertained, or according to proof.

8 26. The aforementioned defendants, and each of them, knowing that the signs were
9 dangerous and defective and in conscious disregard of the public's safety, placed the signs into the
10 stream of commerce and into the market without warning of the defects herein described. Said
11 defendants, and each of them, knew when it did so that the signs would be sold and used by the
12 general public without inspection for defects. By placing the defective signs on the market,
13 defendants, and each of them, impliedly represented that they were safe for the purpose for which
14 they were intended, and by placing them on the market and otherwise representing that they were
15 safe and able to be used, defendants, and each of them, intended that the public should use the signs
16 as herein alleged. Plaintiff did rely on defendants, and each of them, and their representations, all to
17 his damage as alleged above.

18 27. Plaintiff is further informed and believes and thereon alleges that at all times herein
19 mentioned, defendants, and each of them, knew that the signs were defective in design and
20 manufacture and that said defects increased the risk of serious injury to individuals making normal
21 use of the product.

22 28. The aforementioned defendants, and each of them, knowing that the signs were
23 dangerous and defective and in conscious disregard of the public's safety, placed the signs into the
24 stream of commerce and into the market without warning of the defects herein described. Said
25 defendants, and each of them, knew when it did so that the signs would be sold and used by the
26 general public without inspection for defects. By placing the defective signs on the market,
27 defendants, and each of them, impliedly represented that they were safe for the purpose for which

1 they were intended, and by placing them on the market and otherwise representing that they were
2 safe and able to be used, defendants, and each of them, intended that the public should use the signs
3 as herein alleged. Plaintiff did rely on defendants, and each of them, and their representations, all to
4 his damage as alleged above. In doing the things aforementioned, defendants, and each of them,
5 were guilty of malice, oppression, and fraud and plaintiff is entitled to recover exemplary or
6 punitive damages in a sum according to proof.

7
8 WHEREFORE, Plaintiff prays judgment against Defendant Southwest Signs and an unknown
9 number of DOE defendants, and each of them, as hereafter set forth.

10
11 **SECOND CAUSE OF ACTION**

12 (Negligence—Southwest Signs and an unknown number of DOE defendants)

13 Plaintiff Michael Arbsland alleges as and for a cause of action against defendants, and each
14 of them, as follows:

15 29. Plaintiff realleges paragraphs 3 through 14 of the general allegations as though fully
16 set forth at length herein.

17 30. At all times herein mentioned Defendant Southwest Signs and an unknown number
18 of DOE defendants, and each of them, had a duty to properly design, test, produce, manufacture,
19 analyze, recommend, merchandise, advertise, promote, sell, inspect, and provide warnings for said
20 signs that they placed into the stream of commerce.

21 31. At all times herein mentioned defendants, and each of them, knew or in the exercise
22 of reasonable care should have known that the signs, if not properly designed, tested, produced,
23 manufactured, analyzed, recommended, merchandised, advertised, promoted, sold, inspected and/or
24 furnished with adequate warnings or instructions were likely to cause injury.

25 32. Defendants, and each of them, so negligently and carelessly designed, tested,
26 produced, manufactured, analyzed, recommended, merchandised, advertised, promoted, sold,
27 inspected, warned and/or instructed regarding the signs that the same were defective and dangerous

1 products, and unsafe for the use and purpose for which they were intended when used and applied as
2 recommended by the defendants.

3 33. On October 1, 2003, Plaintiff Michael Arbsland, inspected and undertook to repair a
4 sign designed, tested, produced, manufactured, analyzed, recommended, merchandised, advertised,
5 promoted, sold, inspected, warned and/or instructed by said defendants. Plaintiff Michael Arbsland
6 undertook this task with the appropriate amount of care and acted in a reasonably prudent manner.
7 During the course of this repair and as a legal result of the defects herein described, plaintiff
8 sustained serious injuries when due to the defective wiring, an electrical malfunction in the sign
9 occurred and caused him to fall off a ladder.

10 34. Because of the aforementioned negligence of the defendants, and each of them, in
11 their design, fabrication, supervision, control, scheduling, testing, manufacturing, analyzing,
12 recommending, certifying, merchandising, advertising, promoting, selling, inspecting, and the
13 failure to place proper warnings or instructions, plaintiff suffered serious and permanent damage.

14 35. As a direct and proximate result of the acts of the defendants, and each of them, in
15 designing, fabricating, manufacturing, distributing, advertising, merchandising, promoting, selling,
16 and inspecting the Home Depot sign, plaintiff was hurt and injured in his health strength, and
17 activity, and other injury to his body and shock and injury to his nervous system and person. The
18 injuries suffered include, but are not limited to, multiple fractures to his neck, back, and ribs,
19 resulting in paraplegia, and a traumatic brain injury. These injuries have caused and continue to
20 cause plaintiff great mental, physical, and nervous pain and suffering. Plaintiff is informed and
21 believes and thereon alleges that said injuries resulted in permanent disability to him, all to his
22 general damages in a sum according to proof.

23 36. As a further proximate result of said acts of defendants, and each of them, Plaintiff
24 Michael Arbsland was required to and did employ physicians and neurosurgeons to examine, treat,
25 and care for him and did incur medical, hospital, and incidental expenses. Plaintiff will seek leave
26 to amend his complaint when the exact amount has been ascertained, or according to proof.

27

1 37. As a further proximate result of said acts of defendants, and each of them, Plaintiff
2 Michael Arbsland will be required to and will employ physicians and surgeons to examine, treat,
3 and care for him in the future and will incur future medical, hospital, and incidental expenses.
4 Plaintiff will seek leave to amend his complaint when the exact amount has been ascertained, or
5 according to proof.

6 38. As a further proximate result of said acts of defendants, and each of them, Plaintiff
7 Michael Arbsland will be required to and will employ physicians and surgeons to examine, treat,
8 and care for him in the future and will incur future medical, hospital, and incidental expenses.
9 Plaintiff will seek leave to amend his complaint when the exact amount has been ascertained, or
10 according to proof.

11 39. As a further proximate result of said acts of defendants, and each of them, Plaintiff
12 Michael Arbsland was prevented from attending to his usual occupation and thereby lost earnings
13 according to proof.

14 40. Plaintiff Michael Arbsland is informed and believes and thereon alleges that he will
15 thereby be prevented from attending to said occupation in the future and will thereby sustain a
16 further loss of earnings, all to his damage, according to proof. Plaintiff will seek leave to amend this
17 complaint when the exact amount has been ascertained, or according to proof.

18 41. The aforementioned defendants, and each of them, knowing that the signs were
19 dangerous and defective and in conscious disregard of the public's safety, placed the signs into the
20 stream of commerce and into the market without warning of the defects herein described. Said
21 defendants, and each of them, knew when it did so that the signs would be sold and used by the
22 general public without inspection for defects. By placing the defective signs on the market,
23 defendants, and each of them, impliedly represented that they were safe for the purpose for which
24 they were intended, and by placing them on the market and otherwise representing that they were
25 safe and able to be used, defendants, and each of them, intended that the public should use the signs
26 as herein alleged. Plaintiff did rely on defendants, and each of them, and their representations, all to
27 his damage as alleged above. In doing the things aforementioned, defendants, and each of them,

1 were guilty of malice, oppression, and fraud and plaintiff is entitled to recover exemplary or
2 punitive damages in a sum according to proof.

3
4 WHEREFORE, Plaintiff prays judgment against Defendant Southwest Signs and an unknown
5 number of DOE defendants, and each of them, as hereafter set forth.

6
7 **THIRD CAUSE OF ACTION**

8 (Negligence—Home Depot and DOE defendants)

9 Plaintiff Michael Arbsland alleges as and for a cause of action against Defendant Home
10 Depot and an unknown number of DOE defendants, and each of them, as follows:

11 42. Plaintiff realleges paragraphs 3 through 14 of the general allegations as though fully
12 set forth at length herein.

13 43. Defendants, and each of them, owned, maintained, controlled, managed, and/or
14 operated the premises where Plaintiff sustained his injuries.

15 44. Defendants, and each of them, had a duty to properly own, maintain, control,
16 manage, and/or operate the Kauai Home Depot location.

17 45. Defendants, and each of them, knew or in the exercise of reasonable care should have
18 known that the people on the Kauai Home Depot premises were likely to be injured if the premises
19 was not properly owned, maintained, controlled, managed, and/or operated.

20 46. Defendants, and each of them negligently and carelessly owned, maintained,
21 controlled, managed, and/or operated the Kauai Home Depot location.

22 47. On or about October 1, 2003, Plaintiff Michael Arbsland was present at the Kauai
23 Home Depot store. He was an employee of L. Moriguchi, Inc., hired by Home Depot to repair a
24 malfunctioning sign on the premises. While present at this location, plaintiff sustained serious
25 injuries when due to the defective wiring, an electrical malfunction in the sign occurred and caused
26 plaintiff to fall off a ladder.

27

1 48. Because of the aforementioned negligence of the defendants, and each of them, in
2 owning, maintaining, controlling, managing and/or operating the Kauai Home Depot, plaintiff
3 suffered serious and permanent damage.

4 49. As a direct and proximate result of the acts of the defendants, and each of them, in
5 owning, maintaining, controlling, managing and/or operating the Kauai Home Depot, plaintiff was
6 hurt and injured in his health strength, and activity, and other injury to his body and shock and
7 injury to his nervous system and person. The injuries suffered include, but are not limited to,
8 multiple fractures to his neck, back, and ribs, resulting in paraplegia, and a traumatic brain injury.
9 These injuries have caused and continue to cause plaintiff great mental, physical, and nervous pain
10 and suffering. Plaintiff is informed and believes and thereon alleges that said injuries resulted in
11 permanent disability to him, all to his general damages in a sum according to proof.

12 50. As a further proximate result of said acts of defendants, and each of them, Plaintiff
13 Michael Arbsland was required to and did employ physicians and neurosurgeons to examine, treat,
14 and care for him and did incur medical, hospital, and incidental expenses. Plaintiff will seek leave
15 to amend his complaint when the exact amount has been ascertained, or according to proof.

16 51. As a further proximate result of said acts of defendants, and each of them, Plaintiff
17 Michael Arbsland will be required to and will employ physicians and surgeons to examine, treat,
18 and care for him in the future and will incur future medical, hospital, and incidental expenses.
19 Plaintiff will seek leave to amend his complaint when the exact amount has been ascertained, or
20 according to proof.

21 52. As a further proximate result of said acts of defendants, and each of them, Plaintiff
22 Michael Arbsland will be required to and will employ physicians and surgeons to examine, treat,
23 and care for him in the future and will incur future medical, hospital, and incidental expenses.
24 Plaintiff will seek leave to amend his complaint when the exact amount has been ascertained, or
25 according to proof.

26
27

53. As a further proximate result of said acts of defendants, and each of them, Plaintiff Michael Arbsland was prevented from attending to his usual occupation and thereby lost earnings according to proof.

54. Plaintiff Michael Arbsland is informed and believes and thereon alleges that he will thereby be prevented from attending to said occupation in the future and will thereby sustain a further loss of earnings, all to his damage, according to proof. Plaintiff will seek leave to amend this complaint when the exact amount has been ascertained, or according to proof.

WHEREFORE, Plaintiff prays judgment against Defendant Home Depot and an unknown number of DOE defendants, and each of them, as hereafter set forth.


PRAYER

WHEREFORE, plaintiff prays judgment against defendants, and each of them, as follows:

1. For economic damages in a sum according to proof;
2. For general damages in a sum according to proof;
3. For interest on said judgment at the legal rate from the date of the accident;
4. For punitive damages in a sum according to proof;
5. For medical and related expenses according to proof;
6. For loss of earnings and earning capacity according to proof;
7. For costs of suit incurred herein;
8. For such other and further relief as the court may deem proper.

DATED: July 6, 2006

SHEA & SHEA

By: 
NICOLE HANCOCK
Attorneys for Plaintiff

USDC C06-04191 JF

CERTIFICATE OF SERVICE

I am a resident of the State of California, over the age of 18 years, and not a party to the within action. My business address is CESARI, WERNER and MORIARTY, 360 Post, 5th Floor, San Francisco CA 94108. On July 31, 2007, I served the within document:

Stipulation and Order to Allow Southwest Signs, LLC Leave of Court to File 2nd Amended Cross-Complaint

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 6:00 p.m.

☒ by placing the document(s) listed above in a sealed envelope with postage prepaid, in the United States mail San Francisco, California addressed as follows.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

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I am familiar with the firm's practice of processing mail. Under that practice it would be deposited with the U.S. Postal Service on that day with postage thereon prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date/postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury that the above is true and correct.

Executed on July 31, 2007, at San Francisco, California.


N.B. Luffy